

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

IN RE:	:	
	:	
BEAUTIFUL BROWS LLC,	:	CASE NO: 18-66766-jwc
	:	CHAPTER 7
	:	
	:	
DEBTOR.	:	
	:	

**RESPONSE TO TRUSTEE’S OBJECTION TO CLAIM
ASSERTED BY THE INTERNAL REVENUE SERVICE**

The United States, on behalf of the Internal Revenue Service (“IRS”), by and through the United States Attorney for the Northern District of Georgia, and pursuant Rule 9014 of the Federal Rules of Bankruptcy Procedure, Title 11, United States Code, provides the following response to the Chapter 7 Trustee’s Objection.

1. The IRS does not object to this Court’s jurisdiction or to venue.
2. The IRS responds that the Trustee is not entitled to the requested relief.
3. The IRS admits that Debtor Beautiful Brows LLC (“Debtor”) filed a voluntary petition for Chapter 11 bankruptcy on October 3, 2018.
4. The IRS admits that S. Gregory Hays was appointed as the Chapter

11 Trustee in this case.

5. The IRS admits that, on September 3, 2019, the case was converted to a Chapter 7 proceeding.

6. The IRS admits that S. Gregory Hays was subsequently appointed as the Chapter 7 Trustee in this case.

7. The IRS states that its claim is valid and should not be disallowed.

8. The IRS Claim was filed on October 22, 2018, and was amended on October 1, 2019 (Claim 3-5) to reflect a total claim for \$21,500.51 in unpaid employment taxes, interest, and penalties, \$19,305.32 of which is entitled to priority under 11 U.S.C. § 507(a). Debtor submitted Form 941-X to adjust its tax liability for the second and third quarters of 2018. The IRS has not received sufficient information to adjust Debtor's tax liability at this time.

9. The IRS's analysis to date shows that the 2018 adjustments lessened Debtor's tax liability but did not result in an overpayment.

10. The IRS admits that it has not withdrawn its Claim 3-5.

11. The IRS denies that no amount is due to the IRS from the first three quarters of 2018 and denies that IRS Claim 3-5 is in excess of an allowable claim against the Debtor.

12. The IRS states that the Trustee is not entitled to the requested relief.

13. The IRS denies that no amount is due to the IRS from the first three quarters of 2018 and denies that IRS Claim 3-5 is in excess of an allowable claim against the Debtor. At this stage of its investigation, the IRS stands by its claimed amounts in Claim 3-5.

14. The IRS maintains that Claim 3-5 is valid as submitted. The IRS did provide a credit to Debtor based on the second quarter 2018 Form 941-X, which only identified a credit and not a total amount of a refund or amount owed. The balance is the amount sought for that quarter in IRS's Claim 3-5. For third quarter 2018, the Debtor's purported Federal Tax Deposits is different than the amount the IRS received. Debtor has not provided any explanation for this discrepancy. *See* Account Transcripts for 2018 Quarters ending June 30, 2018 and September 30, 2018.

15. The IRS acknowledges the Trustee's reservation of rights.

In further response, the Trustee's Objection and the Debtor's Form 941-X is insufficient to rebut the *prima facie* validity of the IRS's proof of claim, established under Fed. R. Bank. P. 3001(f). *See Bonapfel v. U.S. (In re All Am. of Ashburn, Inc.)*, 156 B.R. 696, 702 (Bankr. N.D. Ga. 1993) ("The debtor-taxpayer

bears the burden of objecting to the proof of claim and producing evidence to refute the proof of claim.”) (emphasis added); *Bakst v. U.S. (In re Katz)*, 168 B.R. 781, 788 (Bankr. S.D. Fla. 1994) (objecting party must present “a colorable objection to a proof of claim, sufficient to overcome the prima facie effect operating in favor of the creditor”); see also *In re South Side House, LLC*, 451 B.R. 248 (Bankr. E.D.N.Y. 2011); *In re Stauffer*, 378 B.R. 340 (Bankr. D. Utah 2007). Additionally, “[t]he objecting party may not rebut the prima facie case merely by stating that the amount of the taxes claimed by the Service is not correct; the objecting party must produce some evidence to support that statement.” *In re White*, 168 B.R. 825, 829 (Bankr. D. Conn. 1994).

* * *

The IRS requests additional time to process any recently filed tax returns, amendments, or additional information from the Debtor or Trustee and to make any appropriate amendments to its Proof of Claim for Claim 3-5.

* * *

WHEREFORE, the Court should deny the Trustee’s objection and requested relief and reset the January 30, 2020 hearing for a date by which the IRS will have had time to process Debtor’s amended return and determine what,

if any, impact such amendment has on Debtor's 2018 tax liability.

Respectfully submitted,

BYUNG BJAY PAK
United States Attorney

s/ Trishanda L. Treadwell
Trishanda L. Treadwell
ASSISTANT U.S. ATTORNEY
Georgia Bar 356896
600 U.S. Courthouse
75 Ted Turner Drive, S.W.
Atlanta, Georgia 30303
Telephone: (404) 581-6000
Facsimile: (404) 581-4667
Trish.treadwell@usdoj.com

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing **RESPONSE TO TRUSTEE'S OBJECTION TO CLAIM ASSERTED BY THE INTERNAL REVENUE SERVICE** with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to the following:

Lindsay P.S. Kolba, Esq.
Office of the U.S. Trustee
362 Richard Russell Federal Building
75 Ted Turner Drive, SW
Atlanta, GA 30303

LAW OFFICES OF HENRY F. SEWELL JR., LLC
Henry F. Sewell, Jr.
Georgia Bar No. 636265
Buckhead Centre
2964 Peachtree Road NW, Suite 555
Atlanta, GA 30305
(404) 926-0053
hsewell@sewellfirm.com
COUNSEL FOR THE CHAPTER 7 TRUSTEE

I hereby certify that I served the same document today by mailing a true and correct copy thereof by U.S. Mail, first-class and postage pre-paid, addressed as follows:

Beautiful Brows LLC GA
5002 N. Royal Atlanta Drive, Suite M
Tucker, GA 30084

This 6th day of January, 2020.

s/ Trishanda L. Treadwell
TRISHANDA L. TREADWELL
Assistant United States Attorney
Northern District of Georgia